

HUMAN SERVICES BOARD

In re) Fair Hearing No. 20,855
)
Appeal of)

The petitioner appeals the decision by the Department of Aging and Independent Living (DAIL) denying payment to his spouse for companion services under the Choices for Care program. DAIL filed a Motion that they are precluded from paying spouses for companion care. The following decision is based upon the Memoranda filed by the parties.

1. The petitioner is a sixty-five year old quadriplegic who receives services from DAIL under the Choices for Care (CFC) program. These services include case management, personal care, and companion care.

2. On or about April 2, 2007, DAIL authorized CFC services for the period of April 23, 2007 through April 22, 2008. DAIL authorized 47.5 hours every two weeks for personal care services by the home health agency and respite care up to 720 hours for the year by the home health agency.

Petitioner's spouse is one of the personal care attendants employed by the home health agency to provide personal care.

3. On or about April 30, 2007, petitioner requested a change to his Plan of Care. Petitioner asked that services be changed from respite care to companion care and asked that his spouse be paid for companion care.

4. On or about May 2, 2007, DAIL granted the change of respite services to companion services up to 720 hours per year. DAIL did not grant petitioner's request that his spouse be paid for companion care.

ORDER

DAIL's decision is affirmed.

REASONS

The Choices for Care (CFC) program is an 1115 Long-Term Care Medicaid Waiver program that has been approved by the Centers for Medicare and Medicaid Services. States must follow the federal Medicaid regulations except when the federal government specifically allows states to disregard certain requirements. (See Section III (9) of the Special Terms and Conditions of Approval by the Centers for Medicare and Medicaid Services.)

Ordinarily, spouses cannot receive payment from Medicaid for services. M152.1(F). The CFC program does include a specific waiver to allow payment to qualified spouses for "personal care" services. State of Vermont "Choices for Care" Demonstration Waiver, Operational Protocol, Section K, Fair Hearing No. 20,382.

The question is whether the waiver for personal care extends to companion care.

"Personal Care" is defined as "assistance to individuals with ADLs and IADLs that is essential to the individual's health and welfare".¹ CFC Regulations, III(37). "Personal Care" services demand a level of commitment and skill by the personal care attendant so that the individual can remain in his/her home without detriment to the individual's health and welfare. The CFC waiver specifically allows payment for "personal care" services to spouses who meet the job requirements. CFC Operational Protocol, Section K.

"Companion Care" is defined as "supervision and socialization of individuals who are unable to care for themselves, as required by the needs of the individual (e.g.

¹ ADLs are activities of daily living such as dressing, bathing, personal hygiene, bed mobility, toileting, transferring, and eating. IADLs are instrumental activities of daily living such as meal preparation, medication management, laundry, household maintenance, etc.

protective supervision, assistance with transportation, recreation, etc.)²." CFC Regulations, III(11). The definition of companion care has been refined in CFC Operational Protocol, Section K, which states that "companion care" does not include hands-on personal care.

Moreover, the CFC regulations do not include any language that extends the waiver of payment to spouses from "personal care" services to "companion care" services or to any other type of service allowed under the CFC program. Based on the plain language of the CFC regulations, DAIL's decision is affirmed.

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² Petitioner is seeking companion services mainly for recreation—boating and fishing.